191—50.37(502) Cheap stock. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.38(502) Options and warrants. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.39 to **50.41** Rescinded, effective October 30, 1985.

191—50.42(502) Real estate investment trusts. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.43(502) Fraudulent practices.

50.43(1) An issuer of securities registered under the Act, or any person who is an officer, director or controlling person of such issuer, is presumed to employ a "device, scheme or artifice to defraud" the purchasers of such securities within the meaning of Iowa Code section 502.401(1) if such person applies or authorizes or causes to be applied any material part of the proceeds from the sale of such securities in any material way contrary to the purposes specified in the prospectus used in the offering of such securities and not reasonably related to the business of the issuer as described in the prospectus.

50.43(2) A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in Iowa Code section 502.401(3). This subrule is not intended to be all-inclusive. Engaging in other conduct such as forgery, embezzlement, conversion, nondisclosure, incomplete disclosure or misstatement of material facts may also be deemed fraudulent.

a. Entering into any security transaction with a customer at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

b. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

c. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would have an impact on the value of the security.

d. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

e. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (2) parking or withholding securities.

f. Although nothing in this rule precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices listed below, the following subparagraphs specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities excluding interests in direct participation programs and shares in open-end mutual funds:

(1) Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation.

(2) Failing to advise the customer, both at the time of solicitation and on the confirmation, of the total of all charges and fees related to a specific securities transaction.

(3) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer; provided that this subparagraph shall apply only if the firm is a market maker at the time of the solicitation.

(4) Conducting sales contests in a particular security.

(5) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(6) Refusing to sell existing securities held by the customer unless the customer executes a purchase transaction.

(7) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(8) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

g. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, but not limited to, the use of boiler room tactics such as repeated or harassing unsolicited telephone calls or the use of fictitious or nominee accounts.

191—50.44(502) Rescission offers.

50.44(1) Requirements for rescission offers. Rescission offers made pursuant to Iowa Code sections 502.504(4) and 502.504(5) shall be typed or printed and shall be captioned **"RESCISSION OFFER"** in bold-faced print or type. They shall be delivered to the offerees personally or sent by certified mail to the offerees' last-known address and shall contain all of the following:

a. The name of the security which is the subject of the offer;

b. A statement setting forth in reasonable detail why liability under Iowa Code sections 502.501, 502.502, and 502.503 may have arisen and fairly advising the offeree of the offeree's rights;

c. An offer to repurchase the security for cash according to the terms specified in Iowa Code section 502.504(4)*"a"*(2) or return the security on the terms specified in Iowa Code section 502.504(5)*"a"*(2);

d. A statement that the offeree's right to bring an action under Iowa Code chapter 502 may be lost unless the offeree accepts the offer within a specified period of time which is not less than 30 days after receipt of the offer;

e. Information regarding the issuer and the security sufficient to permit the offeree to make an informed decision regarding acceptance of the rescission offer including, but not limited to, information as to the issuer's organization and management, its operations and plan of business and its financial condition as shown by a current financial statement prepared in accordance with generally accepted accounting principles;

f. A statement that the offeree may accept the offer by returning a form to the offeror which shall be separately included with the rescission offer;

g. The following statement shall appear in bold-faced type or print immediately before the signature of the offeror:

THIS IS A RESCISSION OFFER MADE PURSUANT TO SECTION 502.504(4)[(5)]* OF THE IOWA UNIFORM SECURITIES ACT AND A COPY IS ON FILE WITH THE IOWA SECURITIES BUREAU. THE BUREAU MAKES NO RECOMMENDATION AS TO WHETHER THE OFFER SHOULD BE ACCEPTED OR REJECTED NOR HAS THE BUREAU PASSED UPON THE ADEQUACY OR ACCURACY OF THIS OFFER.

50.44(2) The acceptance form referred to in subrule 50.25(1)"*f*" shall include the address of the offeror where the form is to be sent. An acceptance may be sent by ordinary mail and is effective on the date postmarked.

50.44(3) Information filed with the administrator. Prior to making any rescission offer pursuant to Iowa Code sections 502.504(4) and 502.504(5), the offeror shall file the following with the administrator:

a. A copy of the rescission offer;

b. The names and addresses of all holders or sellers who are to receive the rescission offer;

c. A showing that the assets of the offeror are sufficient to meet its obligations in the event that all offerees accept the rescission offer.

The filing requirement of this subrule shall apply only to rescission offers made in connection with securities which are registered or which should have been registered under Iowa Code sections 502.206 and 502.207 and rescission offers which are based on potential liability for violations of Iowa Code section 502.201.

50.44(4) Rescission offers made pursuant to Iowa Code sections 502.504(4) and 502.504(5) shall be tendered to all persons to whom liability may exist under sections 502.501, 502.502, and 502.503.

50.44(5) Rescission offers may be accepted at any time during the period stated in the offer even if an offeree had given a prior indication of rejecting the offer.

50.44(6) Rescission offers are subject to the provisions of Iowa Code sections 502.401, 502.404, 502.405, 502.406, and 502.407.

50.44(7) Prior to the filing of a rescission offer, the administrator may require proof that funds or other consideration are available to satisfy offers which are accepted.

50.44(8) The administrator may require the person(s) responsible for a rescission offer to verify that the provisions of this rule and the terms of the rescission offer have been complied with.

50.44(9) The fact that a rescission offer is proposed or made does not limit, in any way, the administrator's administrative or enforcement authority.

*Inserted by agency

191—50.45(502) Definition of offer.

50.45(1) For purposes of section 201, the term "offer" shall not include the circulation of a preliminary offering document provided there is compliance with the following provisions:

a. The document is circulated by a broker-dealer registered under the Act.

b. Prior to its circulation, the document is filed with the administrator as part of an application to register the securities covered by the document.

50.45(2) For purposes of this rule the preliminary offering document must be in the form of a prospectus which shall contain substantially the information required by the Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of section 207 of the Act for the securities being registered; and, the outside front page of the preliminary offering document shall bear in red ink the caption, "Preliminary Offering Document," the date of its issuance, and the following statement printed in type as large as that generally in the body of the prospectus:

"A registration statement relating to these securities has been filed with the Commissioner of Insurance of the State of Iowa, but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This preliminary document shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in Iowa since such offer, solicitation, or sale would be unlawful prior to qualification under section 207 of the Iowa Uniform Securities Act."

191—50.46(502) Institutional buyer exemption. The term "institutional buyer," as used in Iowa Code section 502.203(8) shall include:

50.46(1) Any bank or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5 million; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons who are institutional buyers;

50.46(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940;

50.46(3) Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million;

50.46(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

50.46(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds $1 million;

50.46(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

50.46(7) Any trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that the person is capable of evaluating the merits and risks of the prospective investment;

50.46(8) Any entity in which all of the equity owners are institutional buyers;

50.46(9) Any venture or seed capital company. For purposes of this subrule, a venture or seed capital company is a corporation, partnership or association that has been in existence for five years or whose net assets exceed $250,000 and whose primary business is investing in developmental stage companies or "eligible small business companies" as that term is defined in the regulations of the Small Business Administration.

191—50.47(502) National Securities Exchange—exemption.

50.47(1) The Chicago Board Options Exchange is designated as a national securities exchange qualifying for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), contained in the Memorandum of Understanding dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(2) The Pacific Stock Exchange is designated as a national securities exchange and all Tier I securities listed on the exchange qualify for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-34429 (July 22, 1994) 59 Federal Register 38998 (August 1, 1994), contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Pacific Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(3) The Philadelphia Stock Exchange is designated as a national securities exchange and all Tier I securities listed on the exchange qualify for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-34235 (June 17, 1994) 59 Federal Register 32736 (June 24, 1994), contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Philadelphia Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(4) The Chicago Stock Exchange is designated as a national securities exchange qualifying for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as contained in the Memorandum of Understanding dated April 28, 1996, entered into between the Chicago Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this subrule with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this subrule shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

This rule is intended to implement Iowa Code section 502.202(8).

191—50.48(502) Multijurisdictional disclosure system.

50.48(1) This rule accommodates offerings eligible to utilize the multijurisdictional disclosure system as set forth in United States Securities and Exchange Commission Release No. 33-6902 (1991). For the purposes of this rule, a "multijurisdictional offering" means a class of offering for which a registration statement designated as Form F-7, F-8, F-9, or F-10 by the Securities and Exchange Commission has been filed with the administrator.

50.48(2) Time for taking effect of multijurisdictional registration statement. The period of time that a multijurisdictional registration statement must be on file before it becomes automatically effective under Iowa Code section 502.206(3)*"b"* shall be reduced from 20 days to 7 full business days.

50.48(3) Multijurisdictional offering financial statements. A multijurisdictional offering registration statement may include financial statements and financial information that have been prepared in accordance with Canadian generally accepted accounting principles consistently applied.

50.48(4) Multijurisdictional offering notice of claim of exemption under Iowa Code section 502.203(11). An issuer or underwriter conducting a multijurisdictional offering to existing security holders of the issuer pursuant to the exemption of Iowa Code section 502.203(11) may give notice to the administrator by filing the registration statement Form F-7 with a cover letter claiming that exemption.

This rule is intended to implement Iowa Code section 502.206.

191—50.49 Reserved.

191—50.50(502) Registration and renewals of open-end management investment companies, unit investment trusts and face amount certificate companies.

50.50(1) Effective July 1, 1991, open-end management investment company, unit investment trust and face amount certificate company registration statements will be effective in Iowa for one year from the date on which the administrator orders the registration statement effective. Registration statements must be renewed on an annual basis to remain effective in Iowa.

50.50(2) The effectiveness of an open-end management investment company, unit investment trust or a face amount certificate company registration statement that was originally ordered effective in Iowa prior to July 1, 1991, shall expire unless the registration statement is renewed from July 1, 1991, through June 30, 1992, on or before the anniversary date that the administrator originally ordered the registration statement effective.

50.50(3) The effectiveness of an open-end management investment company, unit investment trust or a face amount certificate company registration statement that was originally ordered effective and which was subsequently amended (increased the amount registered) in Iowa prior to July 1, 1991, shall expire unless the registration statement is renewed between July 1, 1991, and June 30, 1992, on or before the anniversary date that the administrator ordered the latest amendment effective.

50.50(4) An open-end management investment company, unit investment trust or a face amount certificate company registration statement may be renewed by filing a renewal application with the administrator at least 10 days but no sooner than 30 days prior to the renewal date of the registration statement (see subrules 50.50(1), 50.50(2) and 50.50(3)).

50.50(5) Open-end investment companies, unit investment trusts and face amount certificate companies must separately register each portfolio and each class of securities.

50.50(6) An open-end investment company, unit investment trust or a face amount certificate company renewing an effective registration statement that contains multiple portfolios or classes of securities must terminate that registration statement by filing Form USR-1, covering the period of its securities sales from its latest fiscal year-end through the last day before its anniversary renewal date, and file separate registration statement applications for each portfolio and class of securities. Upon effectiveness, the administrator will assign a new registration statement file number to each portfolio and each class of securities.

50.50(7) Every application for registration of an open-end management investment company, unit investment trust or face amount certificate company, including applications for registration of separate portfolios, or classes of securities, must be accompanied by:

a. Filing fees of $250 or $1,000;

b. A complete, executed, uniform application to register securities (Form U-1);

c. A consent to service of process (Form U-2);

d. A corporate resolution (Form U-2A); and

e. The latest prospectus and Statement of Additional Information (SAI).

50.50(8) Open-end management investment companies, unit investment trusts and face amount certificate companies shall pay one of the following filing fees with each original registration statement application and renewal thereof:

a. $1,000, which registers an indefinite amount of securities with an indefinite aggregate offering price for one year.

b. $250, which registers an indefinite amount of securities with a $250,000 aggregate offering price for one year.

50.50(9) If the issuer or registrant paid a filing fee of $250 and if it sold:

a. An amount of $1,500,000 or more during the registration period, it must pay an additional filing fee of $1,250 within 90 days after the registration statement expires; or

b. Less than $1,500,000 and more than $250,000 during the registration period, it must pay an additional one-tenth of 1 percent on the amount of securities sold in excess of $250,000 within 90 days after the registration expires.

50.50(10) Open-end management investment companies, unit investment trusts and face amount certificate companies that pay filing fees of $1,000 as per 50.50(8)*"a,"* or $250 and an additional $1,250 as per 50.50(8)*"b"* and 50.50(9)*"a,"* need not file a sales report after the registration statement expires.

50.50(11) Open-end management investment companies, unit investment trusts and face amount certificate companies that pay filing fees of $250 and sell less than $1,500,000 must file a sales report (USR-1) within 90 days after the registration statement expires.

50.50(12) Open-end management investment companies, unit investment trusts and face amount certificate companies that initially register or renew their registration statements after July 1, 1991, and which sell securities in excess of the aggregate amount registered for sale in Iowa need not pay triple fees as required by Iowa Code section 502.208(13).

This rule is intended to implement Iowa Code section 502.208.

191—50.51(502) Notice filings for offerings of investment company securities.

50.51(1) Except as provided in subrule 50.51(5), no investment company that is registered under the Investment Company Act of 1940 or that has currently filed a registration statement under the Securities Act of 1933 is required to file with the administrator, either prior to the initial offer or after the initial offer in this state of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the Securities and Exchange Commission or is part of an amendment to such federal registration statement.

50.51(2) Prior to the initial offer of a federal covered security in this state, an investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file with the administrator a notice filing on Form NF, together with a filing fee and consent to service of process.

50.51(3) A notice filing for which the term is about to expire may be renewed prior to expiration by filing with the administrator another notice on Form NF and payment of the applicable fee in accordance with Iowa Code section 502.208(2)*"c"* as amended by 1997 Iowa Acts, House File 553.

50.51(4) Amendments to notice filings may be made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing may be made by filing Form NF or providing the administrator with other notice of the withdrawal or termination and shall be effective upon receipt by the administrator of such notice and all fees required by Iowa Code section 502.208 as amended by 1997 Iowa Acts, House File 553.

50.51(5) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the administrator and within the time period set forth in the request, a copy of any document, identified in the request, that is part of the federal registration statement filed with the Securities and Exchange Commission or part of an amendment to such federal registration statement.

50.51(6) An investment company that makes a notice filing under subrule 50.51(2) and pays an initial filing fee of $250 under 1997 Iowa Acts, House File 553, section 9(2)"*c,*" shall pay an additional filing fee of $1,250 within 90 days after the notice filing's annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in this state, together with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of $250,000.

191—50.52 and **50.53** Reserved.

191—50.54(502) Rankings or ratings of direct participation programs.

50.54(1) *Prospectus.* The use of third-party rankings or ratings of direct participation programs in a prospectus is prohibited.

50.54(2) *Offering of interest—direct participation.* The use of third-party rankings or ratings distributed or published in connection with an offering of interests in a direct participation program may be permitted if the following conditions are met:

a. The entire report containing any such rankings or ratings shall be delivered in its complete form and shall not be abbreviated or distributed in excerpted form in any such sales literature.

b. The symbols used for rankings or ratings shall not be similar to or ratings shall not be similar to or the same as the symbols used for existing ratings issued by nationally recognized statistical rating organizations on other types of offerings.

c. All statements in the report containing any such rankings or ratings that are not in conformity with information in the prospectus shall be prohibited. In particular, no references to capital safety or risk shall be allowed unless such references conform to information in the prospectus, such as statements in the prospectus that the investment is subject to a high degree of risk of loss.

d. The report containing the rating or ranking shall prominently disclose all relationships between the rating agency and the issuer as required by Section 17(b) of the Securities Act of 1933 (including, but not limited to, any compensation paid or to be paid directly or indirectly by the issuer for the rating or ranking).

e. The report containing the rating or ranking shall, in all instances, be filed with and completely reviewed by the NASD and the administrator. The report shall be reviewed in the same manner and be subject to the same standards as all other sales literature that is required to be filed. Accordingly, even if an exemption may be available, the report may only be used when it has been filed with, reviewed and approved for use by the NASD.

f. The report containing the ranking or rating shall be filed with the SEC and the administrator as an exhibit to the registration statement for the offering. Issuers using third-party rankings or ratings material as sales literature shall be subject to liability for violations of Section 11 of the 1933 Act and comparable provisions under applicable state laws for any material misrepresentations or material omissions in the report containing the ranking or rating.

This rule is intended to implement Iowa Code section 502.209(1)"*a.*"

191—50.55 and **50.56** Reserved.

191—50.57(502) NASAA guidelines. In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory licensees and enforcement of antifraud laws and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by the North American Securities Administrators Association, Inc. (NASAA). This rule does not include any later amendments or editions of the incorporated matter. The official reporter for NASAA statements of policy is the NASAA REPORTS volume printed by Commerce Clearing House, Inc. A copy of the NASAA REPORTS volume is available to the public during regular business hours at the offices of the administrator in the Lucas State Office Building. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the Iowa securities bureau shall furnish to any person photostatic or other copies of the following NASAA guidelines and statements of policy. The office of the administrator is located in Room 214, and requests may be mailed to Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

50.57(1) *Periodic payment plans.* All periodic payment plans shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Periodic Payment Plans as released for public comment by the NASAA board of directors on December 12, 1991, adopted by the NASAA membership on March 29, 1992, and published in CCH NASAA REPORTS at paragraph 2901.

50.57(2) *Master fund/feeder funds.* All investment companies utilizing the master fund/ feeder fund concept shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Master Fund/Feeder Funds adopted by the NASAA membership on September 15, 1992, effective November 14, 1992, and published in CCH NASAA REPORTS at paragraph 2251.

50.57(3) *Registration of oil and gas programs.* All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; and October 24, 1991; and published in CCH NASAA REPORTS at paragraph 2621.

50.57(4) *Uniform disclosure guidelines—legend.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Uniform Cover Page Legends as adopted by the NASAA membership on September 3, 1987, effective January 1, 1988, amended April 29, 1989, and published in CCH NASAA REPORTS at paragraph 1352.

50.57(5) *Omnibus guidelines.* Omnibus guidelines for the registration of programs (limited or general partnerships, joint ventures, unincorporated association, or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity) for which statements of policy have not been adopted by the NASAA membership. All registrations of these securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA membership on March 29, 1992, and published in CCH NASAA REPORTS at paragraph 2321.

50.57(6) *Registration of commodity pool programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, and published in CCH NASAA REPORTS at paragraph 1201.

50.57(7) *Registration of equipment programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991, and published in CCH NASAA REPORTS at paragraph 1601.

50.57(8) *Registration of real estate programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership October 24, 1991, and published in CCH NASAA REPORTS at paragraph 3601.

50.57(9) *Registration of mortgage programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, and published in CCH NASAA REPORTS, paragraph 701.

50.57(10) *Real estate investment trusts.* The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts as amended by the NASAA membership on September 29, 1993, and published in CCH NASAA REPORTS at paragraph 3401.

50.57(11) *Corporate securities definitions.* For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3812.

50.57(12) *Impoundment of proceeds.* When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 2154.

50.57(13) *Loans and other material affiliated transactions.* When there have been or will be loans and other material affiliated transactions, they shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 374.

50.57(14) *Options and warrants.* Options and warrants may be issued if they substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 2806.

50.57(15) *Preferred stock.* A public offering of preferred stock may be allowed if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3006.

50.57(16) *Promotional shares.* The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3203.

50.57(17) *Underwriting expenses, underwriter's warrants, selling expenses and selling security holders.* The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3671.

50.57(18) *Unsound financial condition.* An issuer may be deemed to be in an unsound financial condition if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3826.

50.57(19) *Use of proceeds.* The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3835.

This rule is intended to implement Iowa Code chapter 502.

REAL ESTATE PROGRAMS

191—50.58 to **50.66** Reserved.

191—50.67(502) Miscellaneous provisions concerning real estate PROGRAMS. Rescinded IAB 1/19/94, effective 2/28/94.

191—50.68 to **50.78** Reserved.

191—50.79(502) Act defined. When used in the rules promulgated by the securities bureau (502), unless the context otherwise requires, "Act" means Iowa Code chapter 502.

191—50.80(502) Commodity pool programs. Rescinded IAB 1/19/94, effective 2/28/94.

191—50.81(502) Brokerage services by national and state banks.

50.81(1) A bank may effect transactions in the following securities without registering as a broker-dealer:

a. United States government securities.

b. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of the foregoing, provided that revenue obligations are not underwritten by the bank.

c. Transactions as part of a sweep account program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less.

d. Transactions for the investment or reinvestment of deposit funds into repurchase agreements.

e. Certificates of deposit issued by a depository institution organized and supervised under the laws of the United States or under the laws of a state.

f. Unsolicited securities transactions solely for the account of and as agent for customers, not to exceed 200 transactions per year provided that:

(1) No investment advice or research services are provided in connection with these transactions; and

(2) The bank does not advertise or recommend transactions in specific securities.

g. Other transactions permitted by the administrator for good cause upon application and order.

50.81(2) A bank, pursuant to a contract with an Iowa registered broker-dealer, may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide bank customers and the public with a telephone number of the broker-dealer and provide telephone facilities on bank premises for customers and members of the public to use in contacting the broker-dealer.

b. Distribute literature to bank customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.81(4).

c. Provide broker-dealer account applications to bank customers and members of the public and assist them in completing such applications. The bank may mail account applications to a broker-dealer. Account applications or a signed attachment shall contain the disclosures set forth in subrule 50.81(4) substantially in the form prescribed in subrule 50.81(5).

d. Assist bank customers who wish to transfer funds into and out of their bank accounts in connection with securities transactions.

e. Provide bank customers and members of the public with mailers and assist them in transmitting securities and securities documents to the broker-dealer in connection with securities transactions.

50.81(3) A bank, pursuant to a contract with an Iowa registered broker-dealer, may attempt to effect and effect securities transactions without registering as a broker-dealer if the bank meets all of the following requirements:

a. Bank employees who attempt to effect and effect securities transactions shall become licensed agents of the broker-dealer and shall: (1) pass an acceptable subject matter examination including the National Association of Securities Dealers (NASD) Series 6 or 7 Examination, (2) pass the Uniform Securities Agent State Law Examination (NASD Series 63), (3) register with the NASD, and (4) register with the Iowa securities bureau as agents of the broker-dealer.

b. If a bank permits a broker-dealer to provide securities services on bank premises, the bank shall require the broker-dealer to clearly identify the office or office space so as to distinguish the broker-dealer area from the bank. If securities services are provided in the same location as bank activities, there shall be a sign identifying the broker-dealer providing the securities services. This requirement shall only apply to areas in which the public has access.

c. A bank shall receive only the following types of compensation from the broker-dealer: (1) transaction-related compensation, subject to subrule 50.81(7)"b," (2) an administrative fee, (3) a salary on behalf of the registered employees who are jointly employed by the bank and the broker-dealer, and (4) lease payments.

50.81(4) A bank, which attempts to effect and effects securities transactions pursuant to a contract with an Iowa registered broker-dealer, may distribute advertisements or promotional materials without registering as a broker-dealer, if the advertisements or promotional materials:

a. Clearly and prominently identify the broker-dealer.

b. Clearly and prominently disclose in bold print that securities transactions and earnings/profits are not insured by the Federal Deposit Insurance Corporation (FDIC).

c. Clearly and prominently disclose that securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the bank.

d. Clearly and prominently disclose that the bank and the broker-dealer are separate organizations.

50.81(5) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.81(4): "[NAME OF BROKER-DEALER] IS NOT A BANK AND SECURITIES OFFERED BY IT ARE NOT BACKED OR GUARANTEED BY ANY BANK NOR ARE THEY INSURED BY THE FDIC."

50.81(6) The disclosure requirements of subrule 50.81(4) shall not apply to radio or television advertisements which do not exceed 30 seconds in length.

50.81(7) A bank may not engage in the following securities activities:

a. Distribute prospectuses to bank customers or to members of the public with respect to securities except: (1) in the exercise of trust functions permitted to banks, or (2) if registered as a broker-dealer, or (3) if performing securities activities as permitted by subrules 50.81(1), 50.81(2), and 50.81(3).

b. Allow licensed joint employees of the bank and broker-dealer to split with unlicensed bank employees commissions or other transaction-related remuneration derived from customers.

c. Transmit account statements, confirmations and other broker-dealer communications to bank customers or members of the public unless the communications contain a disclosure statement as set forth in subrules 50.81(4) and 50.81(5).

d. Permit employees of the bank who are not licensed securities agents of the broker-dealer to receive or transmit orders to the broker-dealer from customers or the public, except as permitted in subrule 50.81(1).

e. Permit employees of the bank who are not licensed agents of the broker-dealer to perform securities functions which directly involve customer contact, except as set forth in subrules 50.81(1) and 50.81(2).

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.82(502) Broker-dealers having contracts with national and state banks.

50.82(1) A broker-dealer which engages in securities activities with banks as permitted in subrules 50.81(2) and 50.81(3) shall maintain for three years and make available upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the bank and broker-dealer with respect to securities services and products offered by the broker-dealer to bank customers and the public.

b. Copies of each contract executed between the bank and the broker-dealer which proposes to sell securities to bank customers and the public.

c. Copies of new account forms to be completed by bank customers and members of the public who open an account with the broker-dealer.

d. List of all employees who are licensed securities agents of the bank and broker-dealer and each employee's social security number and Central Registration Depository (CRD) number.

e. Copies of compliance and procedures manuals relating to the securities activities of the bank.

50.82(2) In addition to subrule 50.25(5), a broker-dealer which engages in securities transactions with banks as permitted in subrules 50.81(2) and 50.81(3) shall not allow the use of the broker-dealer name, logo or trademark on business cards or letterheads utilized by persons who are not Iowa licensed securities agents of the broker-dealer.

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.83(502) Brokerage services by credit unions, savings banks and savings and loan institutions.

50.83(1) Credit unions, savings banks and savings and loan institutions may engage in securities activities as permitted to banks under subrule 50.81(1), 50.81(2) and 50.81(3) without registering as broker-dealers.

50.83(2) Credit unions, savings banks and savings and loan institutions which attempt to effect and effect securities transactions pursuant to contracts with Iowa registered broker-dealers may distribute advertisements or promotional materials without registering as broker-dealers if the advertisements or promotional materials:

a. Clearly and prominently identify the broker-dealer.

b. Clearly and prominently disclose in bold print that securities transactions and earnings/profits are not insured by the (1) Federal Deposit Insurance Corporation (FDIC) in the case of savings banks and savings and loan institutions, and (2) National Credit Union Association (NCUA) in the case of credit unions.

c. Clearly and prominently disclose that securities offered by the broker-dealer are not guaranteed by nor are they obligations of the credit union, savings bank or savings and loan institution.

d. Clearly and prominently disclose that the credit union, savings bank or savings and loan institution and the broker-dealer are separate organizations.

50.83(3) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.83(2): "[NAME OF BROKER-DEALER] IS NOT A [SAVINGS BANK], [SAVINGS AND LOAN INSTITUTION], [CREDIT UNION] AND SECURITIES OFFERED BY IT ARE NOT BACKED OR GUARANTEED BY ANY BANK, SAVINGS BANK, SAVINGS AND LOAN INSTITUTION OR CREDIT UNION NOR ARE THEY INSURED BY THE [FDIC] [NCUA]."

50.83(4) The disclosure requirements of subrule 50.83(3) shall not apply to radio or television advertisements which do not exceed 30 seconds in length.

50.83(5) Credit unions, savings banks and savings and loan institutions may not:

a. Distribute prospectuses to customers or to members of the public with respect to securities except: (1) in the exercise of trust functions permitted to them, or (2) if registered as a broker-dealer or performing securities activities as permitted by subrule 50.83(1).

b. Engage in any of the activities proscribed under paragraphs 50.81(7)*"b"* through 50.81(7)*"e."*

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.84(502) Broker-dealers having contracts with credit unions, savings banks and savings institutions. The requirements of rule 50.82(502) shall apply to broker-dealers having contracts with credit unions, savings banks and savings institutions.

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.85(502) Filing requirements for agricultural cooperative associations.

50.85(1) An agricultural cooperative association which issues notes or other evidences of indebtedness shall notify the administrator, in writing, 30 days before the security is initially sold. Notification shall consist of the following information:

a. A description specifying the name of the issuer, the date of organization of the issuer and the name of a contact person in the event additional information is requested by the administrator.

b. A description specifying the class of persons to whom the offer of securities will be made. If the offering is being made to certain persons or within a specified area, a description of such offerees or area shall be included.

c. A description of the type of security to be offered which may include information on interest and interest payment schedules, information regarding default, redemption, reinvestment, and other facts regarding the rights of holders that the issuer deems material.

d. Financial statements of the agricultural cooperative association including (1) a balance sheet as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report, and (2) other audited financial statements of the association that are available; except that if the filing by the agricultural cooperative association is made within 90 days of the end of its most recent fiscal year and current audited financial statements are not yet available for such fiscal year, the filing may consist of an audited balance sheet and other available audited financial statements for the previous fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report; provided further, that the agricultural cooperative association shall file an audited balance sheet and other available audited financial statements for its most recent fiscal year end as they become available and within 90 days of the end of its fiscal year.

50.85(2) If, after the anniversary date of its initial notice filing, an agricultural cooperative association continues to issue notes or other evidences of indebtedness in accordance with its initial notice filing, the agricultural cooperative association shall annually file with the administrator an audited balance sheet and other available audited financial statements within 30 days of the anniversary of its initial notice filing. The anniversary date of the initial filing for an agricultural cooperative association making its initial filing on the basis of a previous year's audited financial statements shall be the date on which such cooperative files the audited financial statements for its most recent fiscal year end. An agricultural cooperative association which does not issue notes or other evidences of indebtedness after an anniversary date of its initial filing shall not be required to make any further filing of financial information as a condition of qualifying for the exemption from registration.

50.85(3) Agricultural cooperative associations which issue notes or other evidences of indebtedness may use Form 1CP to file the information required in subrule 50.85(1). Form 1CP may be obtained by contacting the Iowa Securities Bureau, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

50.85(4) Effectiveness of rules.

a. The filing requirements established by this rule become effective on July 1, 1992.

b. Sales of notes or other evidences of indebtedness prior to July 1, 1992, will not be deemed in violation of this rule.

This rule is intended to implement Iowa Code section 502.202(13)*"b."*

191—50.86 to **50.89** Reserved.

191—50.90 (502) World class foreign issuer exemption.

50.90(1) Securities meeting the following conditions are exempted from Iowa Code sections 502.201 and 502.602:

a. Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

b. Units consisting of equity securities permitted by 50.90(1)*"a"* and warrants to purchase the same equity security being offered in the unit;

c. Nonconvertible debt securities that are rated in one of the four highest categories of Standard & Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services. For purposes of this paragraph, nonconvertible debt securities means securities that cannot be converted for at least one year from the date of issuance and then only into equity shares of the issuer or its parent;

d. American Depository Receipts representing securities described in 50.90(1)*"a," "b,"* or *"c."*

50.90(2) The issuer is not organized under the laws of the United States, or any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

50.90(3) The issuer, at the time an offer or sale is made under this rule, has been a going concern engaged in continuous business operations for the immediate past five years and, during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this subrule, the operating history of any predecessor that represented more than 50 percent of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the five-year requirement.

50.90(4) The issuer, at the time of the offer or sale under this rule, has a public float of U.S. $1 billion or more. For purposes of this subrule:

a. Public float means the market value of all outstanding equity shares owned by nonaffiliates.

b. Equity shares means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

c. An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person.

50.90(5) The market value of the issuer's shares, at the time an offer or sale is made under this rule, is U.S. $3 billion or more. For purposes of this subrule equity shares means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

50.90(6) The issuer, at the time an offer or sale is made under this rule, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in Rule 902(a)(1) or successor rule promulgated under the Securities Act of 1933 or designated by the U.S. Securities and Exchange Commission under Rule 902(a)(2) promulgated under the Securities Act of 1933.

This rule is intended to implement Iowa Code section 502.203(18).

191—50.91(502) Solicitations of interest prior to the filing of the registration statement.

50.91(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from Iowa Code section 502.201 if all of the following conditions are satisfied:

a. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described.

b. The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.

c. Ten business days prior to the initial solicitation of interest under this rule, the offerer files with the administrator a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

d. Amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular investor pursuant to a request by that investor, are filed with the administrator five business days prior to usage.

e. No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the administrator not to distribute is used to solicit indications of interest.

f. Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a Solicitation of Interest Form, the offerer does not orally communicate with any prospective investor about the contemplated offering unless the investor is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication.

g. During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities.

h. No sale is made until seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed under Iowa Code section 502.203(12), a preliminary prospectus.

i. The offerer does not know, and in the exercise of reasonable care, could not know that any of the issuer's officers, directors, 10 percent shareholders or promoters:

(1) Have filed a registration statement which is the subject of a current effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

(2) Have been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(3) Are currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, the making of untrue statements of material facts and omitting to state material facts, was found.

(4) Are subject to any federal or state administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(5) Are currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or are the subject of any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state, entered within five years prior to the filing of the Solicitation of Interest Form.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by paragraph *"i"* is automatically waived if the agency which created the disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

50.91(2) A failure to comply with a term, condition or requirement of subrule 50.91(1) of this rule will not result in the loss of the exemption from the requirements of Iowa Code section 502.210 for any offer to a particular individual or entity if the offerer shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

b. The failure to comply was insignificant with respect to the offering as a whole; and

c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of subrule 50.91(1).

Where an exemption is established only through reliance upon subrule 50.91(2), the failure to comply shall nonetheless be actionable as a violation of the Act by the administrator under Iowa Code section 502.604.

50.91(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Iowa Code section 502.201, but shall be a violation of Iowa Code chapter 502, be actionable by the administrator under Iowa Code section 502.604, and constitute grounds for denying or revoking the exemption as to specific transactions.

a. Any published notice or script for broadcast and any printed material delivered apart from the Solicitation of Interest Form must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(1) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(2) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(3) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION UNDER FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED IN THIS STATE.

This requirement shall not apply to the delivery of printed material to a person who has already received a Solicitation of Interest Form with the legends correctly included.

b. All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

c. A preliminary prospectus may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

50.91(4) The administrator may waive any condition of this exemption in writing, upon application by the offerer and good cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the administrator with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the administrator of the availability of this rule.

50.91(5) Offers made in reliance on this rule will not be integrated with subsequent offers or sales of securities that are registered in this state. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Iowa Code section 502.203(9) or rule 191—50.16 (502) until 12 months after the last communication with a prospective investor made pursuant to this rule.

50.91(6) Conditions.

a. Nothing in this rule shall be interpreted to limit the application of Iowa Code sections 502.401 and 502.501 et seq., to offers made in reliance on this rule.

b. The administrator may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under antifraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

c. Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Iowa Code section 502.501 et seq. Likewise any misrepresentation or omission may give rise to civil liability under Iowa Code chapter 502. A subsequent registration of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

This rule is intended to implement Iowa Code section 502.203(18).

191—50.92 (502) Streamlined registration for certain equity securities.

50.92(1) An equity security meeting the conditions set forth in this rule may be registered under Iowa Code section 502.206.

50.92(2) In order to register under this rule, all of the following conditions, unless otherwise waived by the administrator, must be satisfied:

a. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States.

b. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal or greater than $5 per share.

c. The issuer of the security has (or will have upon completion of the offering) total assets exceeding $10 million.

d. The security will be offered pursuant to a firm underwriting.

e. The security is the subject of a registration statement filed on Form S-1 or Form SB-2 with the Securities and Exchange Commission.

f. The registration statement the issuer files with the administrator contains audited financial statements for each of the two most recent fiscal years of its operations ending before the filing of the registration statement, and the audited financial statements do not contain an auditor's report for the issuer's most recent fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern.

50.92(3) This rule is not applicable to a security if:

a. The issuer is a blind pool or other offering for which the specific business or properties cannot now be described.

b. The issuer, or a principal officer or principal shareholder thereof, or a broker-dealer offering or selling the securities.

(1) Is subject to statutory disqualification, as defined in subparagraph (A), (B), (C), or (D) of Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)); or

(2) Has been convicted within ten years prior to the offering of any felony under federal or state law in connection with the offer, purchase, or sale of any security, or any felony under federal or state law involving fraud or deceit; or

(3) Is currently named in and subject to any order, judgment, or decree of any court of competent jurisdiction acting pursuant to federal or state law temporarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with a security; or

(4) Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the offering; or

(5) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the offering, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit was found within five years prior to the offering; or

(6) Is subject to any state's administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, sale, or purchase of any security, or involves the making of a false filing with the state within five years of the offering.

c. The disqualification of a person pursuant to 50.92(3)*"b"* may be waived by the administrator if the order, conviction, judgment, or decree relating to the person's disqualification has been disclosed in writing to the administrator and the administrator has determined, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

50.92(4) A filing made pursuant to this rule will be reviewed for compliance with the rule within ten business days of receipt, and it will either be made effective upon review, or earlier if the administrator permits a shorter time frame, or comments explaining the noncompliance with the rule will be promptly sent to the applicant.

50.92(5) The administrator will not deny effectiveness under this rule on the basis of rules 191—50.36(502), 50.37(502), or 50.38(502), or on the basis of the financial condition of the issuer under Iowa Code section 502.209(1)*"h,"* provided:

a. In the case of

(1) A security issued to a promoter within three years immediately preceding the offering or to be issued to a promoter for a consideration substantially less than the offering price; or

(2) A security issued to a promoter for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

The securities shall be the subject of a lockup with the managing underwriter for a period of no less than 180 days, or a longer period if requested by the managing underwriters of the offering.

b. For purposes of this rule, "promoter" includes:

(1) A person who, acting alone or in concert with one or more other persons, founds or organizes the business or enterprise of an issuer;

(2) An officer or director owning securities of an issuer or a person who owns, beneficially or of record, 10 percent or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within three years before the filing by the issuer of a registration statement under this rule and the transaction does not possess the indicia of arm's-length bargaining; and

(3) A member of the immediate family of a person within subparagraph (1) or (2) if the family member receives securities of the issuer from that person in a transaction within three years before the filing by the issuer of the registration statement under this rule and the transaction does not possess the indicia of arm's-length bargaining.

c. A copy of the lockup agreement should be filed with the administrator.

This rule is intended to implement Iowa Code section 502.203(18).

191—50.93(502) Manual or electronically available information exemption. The following transaction is exempted from Iowa Code sections 502.201 and 502.602. Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, provided, at the time of the transaction:

50.93(1) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

50.93(2) The security is sold at a price reasonably related to the current market price of the security;

50.93(3) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

50.94(4) The nationally recognized manuals of Moody's or Standard & Poor's, or a document filed with the U.S. Securities and Exchange Commission (SEC) which is publicly available through the SEC's Electronic Data Gathering or Retrieval System (EDGAR) contains:

a. A description of the business and operations of the issuer,

b. The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile,

c. An audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet, and

d. An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

50.93(5) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

a. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, or

b. The issuer of the security has been engaged in continuous business (including predecessors) for at least three years, or

c. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

This rule is intended to implement Iowa Code section 502.203(18).

191—50.94(502) Investment adviser applications and renewals.

50.94(1) *Investment adviser applications.* Every applicant for an initial license to conduct business as an investment adviser shall file with the administrator:

a. A complete, current Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940), including a manually signed and notarized execution page.

b. The fee of $200 required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

c. Any other information that the administrator determines is relevant to the application.

50.94(2) *Investment adviser renewals.* Every applicant for renewal of an investment adviser license shall annually file with the administrator, preferably between October 1 and December 1:

a. A new page one of Form ADV.

b. Amendments not previously filed pursuant to rule 50.96(502).

c. The fee of $200 required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

191—50.95(502) Investment adviser representative applications and renewals.

50.95(1) *Investment adviser representative applications.* An applicant for initial registration as an investment adviser representative shall file with the administrator:

a. A complete, current Form U-4 (Uniform Application for Securities Industry Registration or Transfer), manually executed by both the individual applicant and the investment adviser.

b. The fee of $30 required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

c. Any other information that the administrator determines is relevant to the application.

50.95(2) *Investment adviser representative renewals.* Every applicant for renewal of an investment adviser representative license shall annually file with the administrator, preferably between October 1 and December 1:

a. A list of investment adviser representatives to be renewed and an attestation that the documents on file are current (Iowa Investment Adviser Certification Form).

b. Amendments not previously filed pursuant to rule 50.96 (502).

c. The fee of $30 for each renewal required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

191—50.96(502) Federal covered adviser notice, renewal and update filings.

50.96(1) *Federal covered adviser notice filings.* A federal covered adviser doing business in this state shall file with the administrator:

a. An executed current Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940) as filed with the Securities and Exchange Commission.

b. The filing fee of $100 required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

50.96(2) *Renewal of notice filings.* A federal covered adviser, having made a notice filing, shall annually file with the administrator, preferably between October 1 and December 1:

a. Page one of Form ADV.

b. A current Schedule I to the Form ADV.

c. A copy of any amendment to its Form ADV or any schedule thereto not previously filed, when such amendment is filed with the Securities and Exchange Commission.

d. The $100 filing fee required by Iowa Code Supplement section 502.302(2) as amended by 1998 Iowa Acts, chapter 1106, with checks made payable to the Commissioner of Insurance.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

191—50.97(502) Updated filings and withdrawals.

50.97(1) *Updates.* If the information contained in any document in the application for initial license or renewal becomes inaccurate or incomplete in any material respect, including a change in the name or form of organization of the applicant, a correcting amendment shall be filed within 30 days of the change. Failure to file within 30 days may result in sanctions as authorized by Iowa Code Supplement section 502.304 as amended by 1998 Iowa Acts, chapter 1106. A federal covered adviser who has made a notice filing shall file with the administrator a copy of any amendment to its Form ADV or any schedule thereto when such amendment is filed with the Securities and Exchange Commission.

50.97(2) *Withdrawals.*

a. Requests to withdraw from investment adviser licensure shall be filed on a current Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser).

b. Requests to withdraw from investment adviser representative licensure shall be filed on a current Form U-5 (Uniform Termination Notice for Securities Industry Registration).

c. If a federal covered adviser is no longer conducting business in the state, the federal covered adviser shall notify the administrator by letter or by filing with the administrator a current Form ADV-W.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

191—50.98 and **50.99** Reserved.

191—50.100(502) Definition of investment adviser representative of a federal covered adviser.

50.100(1) The term "investment adviser representative" as used in Iowa Code chapter 502 and as employed by or associated with a federal covered adviser only includes a person who has a "place of business" in this state, as defined in 50.100(2)*"d,"* and who either:

a. Is a "supervised person," as defined in 50.100(2)*"c,"* provided the supervised person:

(1) Has clients more than 10 percent of whom are natural persons, other than "excepted persons," as defined in 50.100(2)*"a,"* or has no more than five clients who are natural persons other than "excepted persons" as defined in 50.100(2)*"a."*

(2) On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, and

(3) Does not provide only "impersonal investment advice," as defined in 50.100(2)"b"; or who

b. Is not a "supervised person" as that term is defined in 50.100(2)*"c,"* and solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser.

50.100(2) For purposes of subrule 50.100(1):

a. "Excepted person" means a natural person who:

(1) Immediately after entering into the investment advisory contract with the investment adviser has at least $750,000 under management with the investment adviser;

(2) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into;

(3) Owns not less than $5,000,000 in investments at the time the advisory contract is entered into;

(4) Is an executive officer, director, trustee, general partner or person serving in a similar capacity, of the federal covered adviser;

(5) Is an employee of the federal covered adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the federal covered adviser) and who, in connection with the employee's regular functions or duties, participates in the investment activities of such federal covered adviser, provided that such employee has been performing such functions and duties for or on behalf of the federal covered adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months; or

(6) Is not a resident of the United States.

b. "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

c. "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

d. "Place of business" means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

e. "Client" means

(1) A natural person and any of the following:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person or the persons referred to in 50.100(2)*"e,"* or both, are the only primary beneficiaries; and

4. All trusts of which the natural person or the person referred to in 50.100(2)*"e,"* or both, are the only primary beneficiaries;

(2) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in 50.100(2)*"e"*(1)"4"), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(3) Two or more legal organizations referred to in 50.100(2)*"e"*(2) that have identical owners.

50.100(3) Supervised persons may rely on the definition of "client" in 50.100(2)*"e"* to identify clients for purposes of subrule 50.100(1), except that supervised persons need not count clients that are not residents of the United States.

This rule is intended to implement Iowa Code chapter 502.

191—50.101(502) Investment adviser disclosure statement.

50.101(1) Unless otherwise provided, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.301, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the adviser's Form ADV or written documents containing at least the information then required by Part II of Form ADV, or such other information as the administrator may require.

50.101(2) Except as provided in paragraph *"c"* below, an investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client as follows:

a. Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client; or

b. At the time of entering into the contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract.

c. The disclosure statement need not be delivered in connection with entering into a contract for impersonal advisory services.

50.101(3) Except as provided in paragraph *"a"* below, an investment adviser shall annually deliver, or offer in writing to deliver upon written request, the written disclosure statement to each of the adviser's advisory clients without charge.

a. The disclosure statement need not be delivered or offered to advisory clients receiving services solely pursuant to a contract for impersonal advisory services requiring a payment of less than $200.

b. With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $200 or more, an offer of the type specified in this rule shall also be made at the time of entering into an advisory contract. The investment adviser shall deliver the written statement to the client within seven days of receiving a written request made pursuant to an offer required by this rule.

50.101(4) An investment adviser that renders substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client, if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

50.101(5) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of Iowa Code chapter 502 or the rules thereunder or other federal or state law to disclose any information to the adviser's advisory clients or prospective advisory clients not specifically required by this rule.

50.101(6) For purposes of this rule:

a. Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

b. Entering into, in reference to an investment advisory contract, does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

This rule is intended to implement Iowa Code chapter 502.

191—50.102 Reserved.

191—50.103(502) Cash solicitation.

50.103(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under Iowa Code section 502.401(3), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

a. The solicitor is not a person:

(1) Subject to an order issued by the administrator under Iowa Code section 502.304(1), or

(2) Convicted within the previous ten years of any felony or misdemeanor involving conduct described in Iowa Code section 502.304(1)*"c,"* or

(3) Who has been found by the administrator to have engaged, or has been convicted of engaging, in any of the conduct specified in Iowa Code section 502.405, 502.304(1)*"b,"* or 502.304(1)*"j,"* or has materially aided in the act of violation of 502.304(1)*"d,"* or

(4) Subject to an order, judgment, or decree described in Iowa Code section 502.304(1)*"d,"*or

(5) Described in the rules implementing Iowa Code chapter 502; and

b. Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

c. Such cash fee is paid to a solicitor:

(1) With respect to solicitation activities for the provision of impersonal advisory services only; or

(2) Who is:

1. A partner, officer, director or employee of such investment adviser, or

2. A partner, officer, director or employee of a person who controls, is controlled by, or is under common control with such investment adviser, provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and any such other person, is disclosed to the client at the time of the solicitation or referral; or

(3) Other than a solicitor specified in 50.103(1)*"c"*(1) or 50.103(1)*"c"*(2) above if all of the following conditions are met:

1. The written agreement required by 50.103(1)*"b"*:

- Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;
- Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of Iowa Code chapter 502 and the rules promulgated thereunder, whichever is applicable;
- Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by subrule 50.101(3) or SEC Rule 204-0, as applicable, and a separate written disclosure statement as described in subrule 50.103(2).

2. The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

3. The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

50.103(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to 50.103(1)*"c"*(3)"3" shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

d. A statement that the solicitor will be compensated for the solicitor's solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee, and the differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(1) Nothing in this rule shall be deemed to relieve any person of any fiduciary duty or other obligation to which such person may be subject under any law.

(2) For the purposes of this rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. "Client" includes any prospective client.

3. "Impersonal advisory services" means investment advisory services provided solely by means of written materials or oral statements which do not purport to meet the objectives or needs of the specific client, statistical information containing no expressions of opinions as to the investment merits of particular securities, or any combination of the foregoing services.

(3) The investment adviser shall retain a copy of each written agreement required by this rule as a part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(4) The investment adviser shall retain a copy of each acknowledgment and solicitor disclosure document referred to in this rule as part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(5) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of 50.103(2)"*f*"(3) or 50.103(2)"*f*"(4) if such investment adviser:

1. Is registered or licensed as an investment adviser in the state in which the adviser maintains the adviser's principal place of business;

2. Is in compliance with the applicable books and records requirements of the state in which the adviser maintains the adviser's principal place of business; and

3. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the adviser's principal place of business.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

This rule is intended to implement Iowa Code chapter 502.

191—50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers.

50.104(1) A person who is an investment adviser, an investment adviser representative, or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the adviser's clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise not permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of each relationship and the circumstances of each case, an investment adviser and an investment adviser representative shall not engage in unethical business practices, and a federal covered adviser shall not engage in fraudulent or deceptive conduct, including the following:

a. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

c. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if the adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

d. Placing an order to purchase or sell a security for the account of a client without authority to do so.

e. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

f. Borrowing money or securities from a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

g. Loaning money to a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or the fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made.

i. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

j. Charging a client an advisory fee that is unreasonable. The following nonexclusive list of factors may be considered in determining whether a fee is unreasonable: the type(s) of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of the adviser's employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or the adviser's employees.

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

m. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

n. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

o. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

p. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

r. Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

s. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

t. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

u. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

50.104(2) The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502.

191—50.105(502) Custody of client funds or securities.

50.105(1) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

a. The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

b. The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

c. All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

d. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

e. At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

f. At least once every calendar year, an independent certified public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each examination. The effective date of this paragraph shall be June 9, 2000.

g. For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.105(2) Reserved.

This rule is intended to implement Iowa Code chapter 502.

191—50.106(502) Minimum financial requirements for investment advisers.

50.106(1) Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser registered or required to be registered under Iowa Code section 502.302 who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

50.106(2) Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

50.106(3) Except as otherwise provided in subrule 50.106(7), or unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under Iowa Code section 502.302 shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of the adviser's financial condition, including the following:

a. A trial balance of all ledger accounts;

b. A statement of all client funds or securities which are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. A statement as to the number of client accounts.

50.106(4) For the purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets: prepaid expenses (except items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

50.106(5) For the purposes of this rule, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.106(6) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

50.106(7) Every investment adviser whose principal place of business is in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains the adviser's principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

191—50.107(502) Bonding requirements for certain investment advisers.

50.107(1) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

a. Every investment adviser registered or required to be registered under Iowa Code section 502.302 having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.

b. Every investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth standard in subrule 50.106(1) shall be bonded in the amount of net worth deficiency rounded up to the nearest $5000.

50.107(2) An investment adviser whose principal place of business is in a state other than this state shall be exempt from the requirements of subrule 50.107(1), provided that the investment adviser is registered as an investment adviser in the state of the adviser's principal place of business and is in compliance with such state's requirements related to bonding.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

191—50.108(502) Record-keeping requirements for investment advisers.

50.108(1) Except as otherwise provided in subrule 50.108(12) for out-of-state investment advisers, every investment adviser registered or required to be registered under Iowa Code chapter 502 shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All bills or statements (or copies of all bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

f. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

g. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

j. A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"l,"* "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)*"l,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"l"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

m. Notwithstanding the provisions of 50.108(1)*"l,"* when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"m,"* an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)*"m,"* "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)*"m,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"m"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

o. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement as required by 50.103(1)*"b"* to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client as required by 50.103(1)*"c"*(3)"2" that evidences the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement as required by 50.103(1)*"c"*(3)"1." The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes of 50.108(1)*"o,"* the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

q. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

r. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

s. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)*"l"*(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

50.108(2) If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

50.108(3) Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

a. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

b. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

50.108(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

50.108(5) Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

a. All books and records required to be made under the provisions of paragraphs 50.108(1)*"a"* to 50.108(3)*"a,"* inclusive, except for books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

c. Books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p"* shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

d. Books and records required to be made under the provisions of 50.108(1)*"q"* to *"t,"* inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

e. Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)*"c," "g"* to *"j," "n"* to *"o,"* and *"q"* to *"s,"* subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in 50.108(5)*"c."*

50.108(6) An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing on Form ADV-W of the exact address where the books and records will be maintained during the period.

50.108(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

50.108(8) Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

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